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HAROLD B. WILLEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1953.

No. 235

GEORGE V. TAWES,
Petitioner,

versus

CIE. DES MESSAGERIES MARITIMES,
Respondent.

SUPPLEMENTAL BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

CICERO C. SESSIONS,
Counsel for Petitioner.

WOODROW DE CASTRO,
RICHARD B. MONTGOMERY, JR.,
ARTHUR B. HAMMOND, JR.,
VAN SICLEN, RAMIREZ & DE CASTRO,
Of Counsel.

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MAY IT PLEASE THE COURT:

On page nine of respondent's brief in opposition to petition for writ of certiorari there is the following statement:

"The citation of *Sieracki* by petitioner in his argument under this point is irrelevant, and is an obvious belated attempt to claim the benefit of the implied warranty of seaworthiness in a seaman's contract. Petitioner made no such claim in his pleading or in the courts below, and such a claim would have been groundless in the case of a compulsory pilot such as the petitioner."

We herewith quote the facts from *Seas Shipping Company vs. Sieracki*, 328 U. S. 85, 66 Sup. Ct. 872:

> "Sieracki was employed by an *independent stevedoring company* which was under contract to petitioner to load its ship, the S.S. Robin Sherwood. On December 23, 1942, he was on the vessel loading cargo. The winch he operated was controlled by a ten-ton boom at number five hatch. One part of a freight car had been lowered into the hold. The second part weighed about eight tons. While it was being put down the shackle supporting the boom broke at its crown, causing the boom and tackle to fall and injure respondent." (Italics ours.)

Therefore not a seaman but a stevedore was involved in the *Sieracki* case. Similarly in the case at bar a pilot is involved. If a stevedore is in the service of the ship under *Sieracki* certainly a pilot is in the service of the ship. The principles of law of the *Sieracki* case are therefore applicable here.

Also we would like to point out that respondent attempts to distinguish the case of *Johnson vs. U. S.*, 68 S. Ct. 391, 333 U. S. 46 from the case at bar on the grounds that Tawes was implicated by the mere fact that he had his foot on the ladder. The Court in the *Johnson* case obviously used the word implicated as meaning causing or being responsible for the accident. In other words the Court found that since Johnson did not cause the accident the falling of the block alone was sufficient basis for the inference of negligence. This is clear from the following quotation from the *Johnson* Case:

> "In short, Dudder alone remains implicated, since on the record either he or petitioner was the cause

of the accident and *it appears that petitioner was not responsible*". (Italics ours.)

The District Judge in his opinion found as follows:

> "This record contains no facts establishing that the injuries received by Tawes were the result of or produced by any contributing negligence of Tawes." (R. 25.)

And also the Court said:

> "The inquiry, however, is not as to possible causes of the accident but whether *a showing that petitioner was without fault* and was injured by the dropping of the block is the basis of a fair inference that the man who dropped the block was negligent." (Italics ours.)

Thus the District Judge found that Tawes was not at fault or responsible for the accident and therefore the boatswain alone remains implicated. The *Johnson* case is therefore squarely in point with the case at bar and should control.

Respectfully submitted,

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Of Counsel.

I certify that a copy of the above brief has been served on counsel for respondent by depositing same in the United States Mail properly addressed, postage prepaid, this date.

.... day of September, 1953.

.....

CICERO C. SESSIONS.